

**Before the State of South Carolina
Department of Insurance**

In the matter of:

James A. Powell
700 Landford Road
Pauline, South Carolina 29374

File Number 2003-117213

**Consent Order
Imposing Administrative Penalty**

This matter comes before me pursuant to an agreement entered into between the State of South Carolina Department of Insurance and James A. Powell, a licensed South Carolina resident insurance agent.

Upon review of this matter, I hereby find as fact, that James Powell, while licensed to do business as a resident insurance agent within the State of South Carolina for Horace Mann Insurance Company, failed to forward an approximate amount of \$1,052.00 in premiums received by him from various consumers, to said Insurer. Mr. Powell acknowledges this and contends this failure resulted from inadvertence and oversight and not from any intent to avoid the requirements of the law. Nevertheless, these actions can ultimately lead to the revocation of his license to transact the business of bail bondsman as an agent in South Carolina following a public hearing at the Administrative Law Judge Division, pursuant to S.C. Code Ann. & 38-43-130.

Prior to the initiation of any administrative proceedings by the Department against him, Mr. Powell and the Department agreed to submit the entire matter to me, along with their specific recommendation, for my summary decision, rather than to proceed toward a formal public hearing. The consensual recommendation was that, in lieu of the Department seeking to revoke Mr. Powell's resident insurance agent license, he would waive his right to a public hearing and immediately pay an administrative fine in the total amount of \$500.00.

Section 38-43-130 of the South Carolina Code provides that "the Director or his designee may revoke or suspend an agent's license after ten day's notice...when it appears that an agent...has willfully deceived or dealt unjustly with the citizens of this State." This Code section goes on in Subsection (3) to describe "deceived or dealt unjustly with the citizens of this state" specifically to include, "failing to transmit promptly or pay all or a portion of the amount of an insurance premium when the agent or one of his employees has received payment from a customer or insured or someone on his behalf or when it has been financed by the agent." Moreover, Regulation 69-34.1 (e)(m) makes the "failure to report within seven business days the full amount of any premium collected from an applicant an unfair business practice."

After a thorough review of the record, and pursuant to my findings of fact, I hereby conclude as a matter of law, that Mr. James Powell has violated S.C. Code Ann. § 38-43-130(3) (Supp. 2002). As a result, I can now take administrative disciplinary action against his resident

insurance agent license. However, under the discretionary authority provided to me within S.C. Code Ann. § 38-43-130 (Supp. 2002), and after carefully considering the recommendation of the parties, I hereby impose against James A. Powell an administrative fine in the total amount of \$500.00. Mr. Powell must pay that fine within ten days of the date of my signature upon this consent order. If he does not timely pay that total fine amount, his resident insurance agent license will be immediately revoked without any further disciplinary proceedings.

The parties have reached this agreement in consideration of the Department having never taken any administrative disciplinary action against James A. Powell before, and of his assurance that in the future he will comply with the State's insurance laws. The parties expressly agree and understand Mr. Powell's payment of the agreed-upon penalty constitutes full accord and satisfaction of this matter.


By his signature upon this consent order, James Powell acknowledges that he understands that this administrative disciplinary order is a public record subject to the disclosure requirements of the State of South Carolina's *Freedom of Information Act*, S.C. Code Ann. §§ 30-4-10, *et seq.* (1991 and Supp. 2002).

Nothing contained within this administrative disciplinary order should be construed to limit or to deprive any person of any private right of action under the law. Nothing contained within this administrative disciplinary order should be construed to limit, in any manner, the criminal jurisdiction of any law enforcement or judicial officer. Nothing contained within this administrative disciplinary order should be construed to limit the statutory duty of the Director of Insurance, exercised either directly or through the Department of Insurance, to "report to the Attorney General or other appropriate law enforcement officials criminal violations of the law relative to the business of insurance or the provisions of this title which he considers necessary to report." S.C. Code Ann. § 38-3-110 (4) (Supp. 2002).

It is, therefore, ordered that James Powell shall, within ten days of the date of my signature on this consent order, pay through the Department an administrative fine in the total amount of \$500.00.

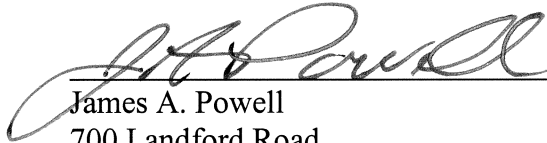
It is further ordered that a copy of this consent order be immediately transmitted to the National Association of Insurance Commissioners for distribution to its member states and a copy be placed in Mr. Powell's licensing file.

This order becomes effective as of the date of my signature below.


Ernst N. Csiszar
Director

June 11, 2003, at
Columbia, South Carolina

I CONSENT:

A handwritten signature in cursive script, appearing to read "J. A. Powell", written over a horizontal line.

James A. Powell
700 Landford Road
Pauline, South Carolina 29374.

Dated this 6 day of June, 2003